

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 02-0062**

**Corporate Income Tax**

For the Fiscal Years Ending May 31, 1996, 1997, 1998, and 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Gross Income Tax - Classification of Contractor's Receipts as Taxable at the Lower Rate or Higher Rate of Tax**

**Authority:** 45 IAC 1.1-2-12 (c)

The taxpayer protests the auditor's reclassification of a portion of its receipts from the lower to the higher rate of tax.

**II. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

The taxpayer is a contractor that builds above-the-ground tanks and storage facilities for petroleum refiners. A departmental audit resulted in an assessment of additional gross income tax. The taxpayer protested this assessment and the imposition of penalty in letters dated January 29, 2001 and April 18, 2002, respectively.

**I. Gross Income Tax - Classification of Contractor's Receipts as Taxable at the Lower Rate or Higher Rate of Tax**

The auditor reclassified a portion of the taxpayer's gross receipts from the lower rate to the higher rate of taxation. The taxpayer protested stating that the auditor treated all of its contracts as time and material contracts. The taxpayer asserted that not all of its contracts were of this

type. Following review and discussion, the auditor and the taxpayer resolved this matter. The auditor has completed a supplemental audit to modify this adjustment. In a letter dated April 18, 2002, the taxpayer withdrew its protest of this issue based on the proposed supplemental audit adjustments.

### **FINDING**

The taxpayer has withdrawn its protest of this issue.

## **II. Tax Administration – Penalty**

For gross income tax purposes, the taxpayer originally reported income from the performance of contracts as follows: 33 percent was reported as subject to the higher rate of tax, and 67 percent was reported as subject to the lower rate. The audit properly reclassified a portion of these receipts from the lower to the higher rate of tax. This reclassification constitutes the bulk of the audit assessment.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

In a letter dated June 4, 2002, the taxpayer argued that in 2001 it hired an outside consulting firm to serve as its internal tax department. According to the taxpayer, this action has greatly improved its compliance with the tax laws of Indiana and other states. While the hiring of the consulting firm may be commendable, it does not excuse the fact that the taxpayer's record keeping practices during the audit period were inadequate.

Improved compliance efforts made subsequent to the completion of an audit do not excuse a taxpayer's negligence during the audit period.

A second argument put forth by the taxpayer asserts that nearly a year passed between the filing of its protest and the point at which the auditor returned to review the taxpayer's additional information. The taxpayer further points out that interest charges have continued to accrue on the supplemental assessment. The taxpayer believes that as it was not responsible for this delay the penalty should be waived to balance the increased interest charges.

While the department strives to process all taxpayer protests in a prompt manner, it is not required by statute or regulation to do so within a specific period of time. Furthermore, the taxpayer had the option of paying the original assessment in full in order to stop the accrual of interest. Following the resolution of the audit issues, the taxpayer could have filed a claim for refund if appropriate. Neither argument set forth by the taxpayer establishes that its failure to timely pay the full amount of tax due was due to reasonable cause and not due to negligence.

### **FINDING**

The taxpayer's protest is denied.